



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R07-OAR-2018-0837; FRL-9992-09-Region 7]

**Approval of State Plans for Designated Facilities and
Pollutants; Missouri; Diammonium Phosphate Fertilizer Units**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to rescind the current state plan and associated regulation and to accept the negative declaration submitted by the State of Missouri for Diammonium Phosphate Fertilizer units. The negative declaration submitted by the Missouri Department of Natural Resources (MoDNR) certifies that Diammonium Phosphate Fertilizer (DPF) units subject to section 111(d) of the Clean Air Act (CAA) do not operate within the jurisdiction of the State of Missouri. The EPA is accepting the negative declaration in accordance with the requirements of the CAA.

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2018-0837. All documents in the docket are listed on the <https://www.regulations.gov> web site.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov> or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Larry Gonzalez, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551-7041 or by email at gonzalez.larry@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" refer to the EPA.

Table of Contents

- I. Background.
- II. What Action is the EPA Taking?
- III. Statutory and Executive Order Reviews.

I. Background

The Clean Air Act (CAA) requires that state regulatory agencies implement emission guidelines and associated compliance times using a state plan developed under sections 111(d) of the CAA. The general provisions for the submittal and approval of

state plans are codified in 40 CFR part 60, subpart B and 40 CFR part 62, subpart A. Section 111(d) establishes general requirements and procedures on state plan submittals for the control of designated pollutants. States have options other than submitting a state plan in order to fulfill their obligations under CAA section 111(d). If a state does not have any existing units for the relevant emission guidelines, a letter can be submitted certifying that no such units exist within the state (*i.e.*, a negative declaration) in lieu of a state plan, in accordance with 40 CFR 60.5010. The negative declaration exempts the state from the requirements of subpart B that would otherwise require the submittal of a CAA section 111(d) plan.

On August 6, 1975, the EPA finalized standards of performance for new stationary sources from the phosphate fertilizer industry which included diammonium phosphate fertilizer production plants under the authority of section 111 of the CAA. As required by the CAA 111(d) and 40 CFR part 60, subpart B, each state must adopt and submit a plan for the control of pollutants from existing facilities regulated under section 111(b) New Source Performance Standards following publication of a notice of availability of an applicable emission control guideline unless no such facilities exist within the state. If there are no facilities in the state, the state is required to submit a letter of certifying that fact.

In response to these requirements, the State of Missouri submitted a plan for the control of fluoride emissions from phosphate fertilizer plants on January 3, 1985. The state plan was based on the state regulation 10 CSR 10-3.160 "Restriction of Emissions from Diammonium Phosphate Fertilizer Plants". At the time of the submittal there was a single operating phosphate fertilizer plant in the State located in Joplin, Missouri. On March 14, 1986, the EPA approved the state plan and associated regulation submitted by the State of Missouri pursuant to CAA section 111(d) and 40 CFR part 60, subpart B. Subsequent to this state plan approval, the single phosphate fertilizer plant operating in Joplin, Missouri ceased fertilizer production and dismantled its fertilizer production equipment in between the years of 2003 and 2004.

On December 3, 2018, MoDNR submitted a negative declaration to the EPA, certifying that there are no operating phosphate fertilizer plants in Missouri, and requested that the EPA rescind its previous state plan applicable to phosphate fertilizer production facilities. Additionally, MoDNR notified the EPA that it would rescind its 10 CSR 10-3.160 rule that controlled emissions of fluoride from diammonium phosphate fertilizer plants.

On February 4, 2019, the EPA published in the **Federal Register** (84 FR 1039) a rule proposing to accept MoDNR's

certification that there are no diammonium phosphate fertilizer production units operating in the State of Missouri subject to 40 CFR part 60, subpart V. In response to the proposal, the EPA received no adverse comments.

II. What Action is the EPA Taking?

The EPA is taking final action to amend 40 CFR part 62 by accepting withdrawal of Missouri's 111(d) plan for control of fluoride emissions from existing phosphate fertilizer plants and accepting MoDNR's negative declaration certifying that there are no phosphate fertilizer production facilities operating in Missouri subject to 40 CFR part 60, subpart V. This action applies to the state's regulatory requirements for existing facilities and not new sources. Simultaneously, we are amending 40 CFR part 62, subpart AA, to remove phosphate fertilizer plants from the list of affected source categories found at 40 CFR 62.6350(c)(1).

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). This final action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action

merely approves the state's negative declaration as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action does not impose an enforceable duty upon State, local, or tribal governments, and does not reduce or eliminate the amount of authorization of Federal appropriations, and because it contains no regulatory requirements applicable to small governments, this action does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This action is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this action. This action merely approves a state negative declaration submitted in response to a Federal standard and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rulemaking also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) because it approves a state submission in response to a Federal standard.

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Burden is defined at 5 CFR 1320.3(b).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of

Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**.

A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b) (1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b) (2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Phosphate fertilizer plants.

Dated: _____

April 12, 2019.

James Gulliford,
Regional Administrator,
Region 7.

For the reasons stated in the preamble, the EPA is amending 40 CFR part 62 as set forth below:

PART 62-APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart AA-Missouri

2. Amend § 62.6350 by adding paragraph (b)(7) and revising paragraph (c) to read as follows:

§62.6350 Identification of plan

* * * * *

(b) * * *

(7) A withdrawal of Missouri's 111(d) plan, including state rule 10 CSR 10.3.160, for control of fluoride emissions from existing phosphate fertilizer plants was state effective on September 30, 2018 and was submitted on December 3, 2018.

(c) *Designated facilities.* The plan applies to existing facilities in the following categories of sources:

- (1) Primary aluminum reduction plants.
- (2) Sulfuric acid production plants.

3. Section 62.6351 is revised to read as follows:

§62.6351 Identification of plan-negative declaration.

Letter from the Missouri Department of Natural Resources, submitted December 3, 2018, certifying that there are no Diammonium Phosphate Fertilizer Units subject to 40 CFR part 60, subpart V of this chapter. *Effective date:* The effective date of the negative declaration and EPA withdrawal of the prior plan approval is **[Insert date 30 days after date of publication in the Federal Register]**.

[FR Doc. 2019-07797 Filed: 4/18/2019 8:45 am; Publication Date: 4/19/2019]